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LUCAS COUNTY

2016 NOV 15 AM 11:45

COMMON PLEAS COURT
BERNIE QUILTER
CLERK OF COURTS

IN THE COURT OF COMMON PLEAS OF LUCAS COUNTY, OHIO

Tiffany R. Cole,

Plaintiff-Appellant,

vs.

Sunshine Inc. of Northwest Ohio, et al.,

Defendants-Appellees.

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Case No. CI 16-2773

Honorable Dean Mandros

OPINION AND JOURNAL ENTRY

This cause is before the Court upon claimant's appeal of the Ohio Unemployment Compensation Review Commission's final decision which found that claimant quitting her job for new employment constituted a quit without just cause, thereby suspending her benefits, and that claimant did not meet the requirements of R.C. 4141.291 to remove the suspension of benefit rights because she did not obtain such new employment while still employed or commence such new employment within seven calendar days after the last day of employment with the prior employer. However, it is clear from the record that the Hearing Officer and Review Commission failed to consider all of the evidence submitted by claimant regarding the issues of claimant's last day worked for her prior employer and first day of employment with her new employer. Accordingly, the Court finds that the Review Commission's decision is unlawful and unreasonable and the case is remanded to the Review Commission for an additional hearing for the limited purpose of determining these two crucial dates in light of all the evidence in the record.

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I. FACTS AND PROCEDURAL BACKGROUND

On November 14, 2014, Ms. Cole's application for unemployment compensation benefits in connection with her separation from employment with CJ & J Davis Inc., d.b.a. Comfort Keepers, was allowed with a benefit year beginning October 19, 2014.

It is undisputed that Ms. Cole began employment with Defendant-Appellee Sunshine Inc. of Northwest Ohio ("Sunshine") on or about January 5, 2015. She subsequently was hired by Washington Local Schools and quit her job with Sunshine in an attempt to better her economic position. (Transcript of March 24, 2016 hearing at pg. 9)

On June 10, 2015, Ms. Cole's benefit rights were suspended after a finding that she quit work at Sunshine on January 5, 2015, without just cause. It was ruled that Ms. Cole was ineligible for benefits from January 5, 2015 through April 4, 2015, and that she had been overpaid benefits to which she was not entitled for reasons determined to be "non-fraud" in the amount of \$570.00 which was to be repaid to the Ohio Department of Job and Family Services ("ODJFS"). Ms. Cole appealed this Determination of Benefits.

On February 9, 2016, the Director held that Ms. Cole's appeal of the June 10, 2015 Determination of Benefits was untimely. Ms. Cole appealed this decision and the appeal was transferred by the Director to the Unemployment Compensation Review Commission ("Review Commission") on February 19, 2016. Following a hearing, the Review Commission ruled that Ms. Cole's appeal of the June 10, 2015 Determination of Benefits was, in fact, timely and that a hearing would be scheduled on the merits of the case. According to the Notice of Hearing mailed March 11, 2016, the issues to be discussed at the hearing were (1) whether Ms. Cole was credited with a waiting

period, or paid benefits, to which she was not entitled for reasons other than fraudulent misrepresentation and (2) whether Ms. Cole quit employment without just cause.

A hearing was held before Hearing Officer Nadine S. Pettiford, by telephone, on March 24, 2016. Ms. Cole appeared and testified. Sunshine was represented by Matt Henry, Associate Director of Human Resources. Shari Barnes, Investigator, represented the ODJFS.

On March 30, 2016, Hearing Officer Pettiford issued her Decision. The Findings of Fact stated:

Claimant, Tiffany Cole, worked for Sunshine of Northwest Ohio. Claimant worked for this employer on January 5, 2015. She was hired to be a driver, but she was required to undergo orientation first. Claimant participated in orientation on January 5, 2015, and never returned after that. She was paid \$28.02 from this employer for her one day of work. When she filed her claim for the week ending January 10, 2015, claimant reported that she did not work or have earnings.

Claimant admits that she quit this employer to work for Washington Local Schools, which she considered to be a better opportunity. She was hired as a substitute classroom aide by Washington Local Schools on January 21, 2015. Her first day worked was February 4, 2015.

Ms. Pettiford found that the fact that Ms. Cole quit work at Sunshine to take another job is considered to be a quit without just cause within the meaning of the Ohio Unemployment Compensation Law, thus disqualifying Ms. Cole from benefits. It was further held that Ms. Cole did not meet the requalifying requirements under R.C. 4141.291 because the evidence failed to establish that Ms. Cole obtained her new employment while still employed or that she commenced her employment with Washington Local Schools within seven calendar days after her last day of employment with Sunshine. This was based on Ms. Pettiford's finding that "[t]he evidence establishes that claimant worked on one day, January 5, 2015, accepted the new position on January 21, 2015, and actually started her new employment with Washington Local Schools on February 4,

2015." Ms. Pettiford concluded that Ms. Cole's benefit rights were suspended and that she was to repay the ODJFS the overpaid benefits of \$570.00 she received for reasons other than fraudulent misrepresentation for the weeks ending January 17, 2015 through February 7, 2015.

Ms. Cole appealed Ms. Pettiford's decision to the Review Commission on April 8, 2016. On April 27, 2016, the Review Commission disallowed her request for review.

This cause is now before the Court upon the Notice of Appeal filed with this Court by Ms. Cole on May 17, 2016.

II. STANDARD OF REVIEW

R.C. 4141.282(H) governs the review by the common pleas court of a final decision by the Review Commission regarding unemployment benefits. *Gallagher v. Alliance Hospitality Management*, 5th Dist. Stark No. 2009CA00164, 2010-Ohio-1882, ¶ 10. That section reads:

The court shall hear the appeal on the certified record provided by the commission. If the court finds that the decision of the commission was unlawful, unreasonable, or against the manifest weight of the evidence, it shall reverse, vacate, or modify the decision, or remand the matter to the commission. Otherwise, the court shall affirm the decision of the commission.

When reviewing a decision of the Review Commission, common pleas courts are limited to determining whether the Commission's decision is supported by evidence in the record. *Tzangas, Plakas & Mannos v. Administrator, Ohio Bureau of Employment Services*, 73 Ohio St.3d 694, 696, 1995-Ohio-206, 653 N.E.2d 1207. Determination of purely factual questions is primarily within the province of the Review Commission, i.e., the common pleas court has a limited power of review and is not permitted to make factual findings or to determine the credibility of witnesses. *Irvine v. Unemployment Compensation Board of Review*, 19 Ohio St.3d 15, 17-18, 482 N.E.2d 587, 590

(1985). A reviewing court may not reverse the Commission's decision simply because reasonable minds might reach different conclusions. *Id.* at 18.

III. DISCUSSION

R.C. 4141.29 addresses the eligibility requirements for unemployment compensation and specifically states in R.C. 4141.29(D)(2)(a) that a claimant will be denied eligibility for unemployment compensation benefits if the claimant "quit his work without just cause * * *."

Ms. Cole admitted that she quit her employment with Sunshine to work for Washington Local Schools because she would get more hours. Generally, leaving one job for a better job constitutes quitting without just cause under R.C. 4141.29(D)(2)(a). *Radcliffe v. Artromick International, Inc.*, 31 Ohio St.3d 40, 41, 508 N.E.2d 953 (1987); *Vinson v. AARP Foundation*, 134 Ohio App.3d 176, 730 N.E.2d 479 (10th Dist.1999); *Rice v. Keg & Cork*, 2nd Dist. Clark No. CA 2193, 1986 Ohio App. LEXIS 7739 (July 31, 1986); *Potoczak v. Penton Publishing*, 8th Dist. Cuyahoga No. 74635, 1999 Ohio App. LEXIS 3858 (Aug. 19, 1999). Therefore, Ms. Cole voluntarily quit her job at Sunshine without just cause and became disqualified from receiving unemployment benefits pursuant to R.C. 4141.29(D)(2)(a).

However, the disqualification can be removed if Ms. Cole (1) commenced the new employment with Washington Local Schools while still employed at Sunshine or (2) commenced the new employment at Washington Local Schools within seven calendar days after her last day of employment with Sunshine. R.C. 4141.291(A)(2) In order to determine whether either requirement has been met, the last day of her employment with Sunshine as well as the date her new employment with Washington Local Schools commenced must be clearly established in the record.

Testimony at the March 24, 2016, hearing varied as to Ms. Cole's last day of work at Sunshine. Matt Henry, Associate Director of Human Resources at Sunshine, testified that he thought Ms. Cole was employed by Sunshine for about three weeks. When Ms. Pettiford told him there was information in Ms. Cole's unemployment compensation file that she worked only part of January 5, 2015 and then left and never returned, Mr. Henry stated "[f]or some reason I thought it was three weeks, but I just know for a fact that we didn't hear from her after the orientation." (Trans. pg.12) Shari Barnes, Unemployment Fraud Investigator for ODJFS, testified that she was told by Pamela Easler at Sunshine that Ms. Cole worked for Sunshine one day, January 5, 2015, and never came back. (Trans. pg. 14) In contrast, Ms. Cole testified that she thought her last day at Sunshine was January 21st. (Trans. pgs. 7-8, 9)

Other evidence in the record at the time of the hearing included: (1) a request for wage information to Sunshine signed by Pamela Easler, Human Resources Coordinator on May 8, 2015, which indicated that Ms. Cole's first and last day worked was January 5, 2015, and that her rate of pay was \$9.34 per hour; (2) the May 12, 2015, Report of Investigative Contact by Ms. Barnes who contacted Pam, "HR Coord.," and stated: "Clt attended a partial day of orientation on 01/05/2015. She states they broke for lunch and clt never came back, never heard from her again."; (3) a request for wage information to Washington Local Schools, signed by the Payroll Clerk on May 19, 2015, indicating Ms. Cole's first day worked was February 4, 2015; and (4) an unexplained payroll printout with Ms. Cole's name printed at the top and Pamela Easler's name typed at the bottom stating:

<u>Date</u>	<u>Wage Type</u>	<u>Hours</u>	<u>Amount</u>
04/03/2015	REG	3.0	28.02
	Total	3.0	28.02

(Emphasis added.)

To support her argument that she met the requirements for removal of the disqualification of benefits, Ms. Cole submitted on January 13, 2016, a letter from Robin Walton, Secretary Human Resources at Washington Local Schools, verifying Ms. Cole's employment with Washington Local Schools:

This verifies that Tiffany Cole was hired by Washington Local Schools at the January 21, 2015 Board of Education meeting. She was hired as a substitute Classroom Aide. **She was on an 'on call' basis.** Her first day worked was February 4, 2015 for 4 hrs. and her last day worked was May 28, 2015 for 2.75 hrs. She worked 40 days from February 4, 2015 through May 28, 2015.

(Emphasis added.) In addition, on February 12, 2016, Ms. Cole submitted a letter from Laurie Shipp, Benefits Coordinator at Sunshine, stating that Ms. Cole's last day of employment at Sunshine was January 26, 2015:

This letter serves as verification of employment for Tiffany R. Cole. Ms. Cole was employed at Sunshine from 1/5/15 through 1/26/15. She was hired as a part-time driver but never worked in that capacity as she did not return to work following her new employee orientation.

Ms. Cole mentioned to Hearing Officer Pettiford at the March 24, 2016, hearing that she had faxed these documents to ODJFS but Ms. Pettiford made no further inquiry as to the content of the documents and they were not discussed in her March 30, 2016, Decision. (Trans. pgs. 17-18)

Along with her notice of appeal to the Review Commission on April 8, 2016, Ms. Cole faxed two additional documents. The first was her W2 form for 2015 from Sunshine showing gross wages of \$322.23. The second was a payroll printout from Sunshine showing the hours worked by Ms. Cole in January of 2015 totaled 34.5 hours:

01/10/15	TRAINING		15.50
01/17/15	TRAINING		<u>16.00</u>
		Payment Total	31.50
01/21/15	REG		<u>3.00</u>
		Payment Total	3.00

The Court notes that 34.5 hours multiplied by Ms. Cole's hourly rate of \$9.34 equals \$322.23, the total gross wages from Sunshine as reported on Ms. Cole's W2 form. There is no indication in the record that the Review Commission considered these two additional documents, or the previously filed letters from Laurie Shipp and Robin Walton, before disallowing Ms. Cole's request for review on April 27, 2016.

In sum, the only evidence in the record supporting Ms. Pettiford's conclusion that Ms. Cole's first and last day of work at Sunshine was January 5, 2015, are statements made by, and documents prepared by, Pamela Easler. Ms. Easler did not testify at the hearing nor file any sworn documents. On the other hand, Ms. Cole testified at the hearing that she thought her last day worked at Sunshine was January 21st, Mr. Henry testified that he thought she worked at Sunshine for three weeks, the payroll printout showed Ms. Cole worked 34.5 hours at Sunshine in January of 2015, her W2 form stated she earned \$322.23 in gross wages from Sunshine in 2015, and the letter from Ms. Shipp stated that Ms. Cole's last day of work at Sunshine was January 26, 2015.

Thus, the record contains evidence reflecting three different dates of final employment at Sunshine: January 5, 2015, January 21, 2015, and January 26, 2015. While it is the duty of the Hearing Officer and Review Commission to determine factual issues, there is no indication in the record that either considered the overwhelming evidence submitted by Ms. Cole. Consequently, the issue of Ms. Cole's last day of employment at Sunshine remains.

Furthermore, the date Ms. Cole's employment commenced at Washington Local Schools was not discussed at the March 24, 2016 hearing. Although the Decision stated that Ms. Cole was hired by Washington Local Schools on January 21, 2015, and her first day worked was February 4, 2015, the letter from Ms. Walton noted that Ms. Cole was hired by Washington Local Schools on January 21, 2015, on an "on call" basis. Again, there is no indication that Hearing Officer Pettiford or the Review Commission considered Ms. Walton's letter. Therefore, an issue also remains as to whether Ms. Cole's employment with Washington Local Schools commenced on the date she was hired since her employment was on an "on call" basis or on the first day she actually worked at Washington Local Schools.

The Hearing Officer and Review Commission were required to consider the entire file. R.C. 4141.281(C). Since these issues were evident from the record, Hearing Officer Pettiford should have *sua sponte* inquired into these matters. *AAA Northwest Ohio v. Director, Ohio Department of Job and Family Services*, 6th Dist. Lucas No. L-02-1127, 2002-Ohio-7311, ¶ 31. *See also*, R.C. 4141.21(C)(2) ("Hearing officers have an affirmative duty to question parties and witnesses in order to ascertain the relevant facts and to fully * * * develop the record.").

The Court concludes that it was imperative that the Hearing Officer and Review Commission consider the documents submitted by Ms. Cole contained in the record and their failure to do so rendered the Review Commission's Decision unreasonable and unlawful. The case shall, therefore, be remanded to the Review Commission for the limited purpose of addressing the factual issues of Ms. Cole's last day of employment with Sunshine and first day of employment at Washington Local Schools.

JOURNAL ENTRY

It is **ORDERED** that this case shall be **REMANDED** to the Ohio Unemployment Compensation Review Commission for an additional hearing for the limited purpose of determining the following issues: (1) Plaintiff-Appellant Tiffany R. Cole's last date of employment with Sunshine Inc. of Northwest Ohio; and (2) Plaintiff-Appellant Tiffany R. Cole's first day of employment with Washington Local Schools.

Date: 11-14-16


Dean Mandros, Judge